

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Gallatin Housing Associates, LP)
Dist. 3, Map 126, Control Map 126, Parcel 10.00, S.I. 000) Sumner County
Commercial Property)
Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$816,200	\$11,658,200	\$12,474,400	\$4,989,760

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on February 26, 2007 in Gallatin, Tennessee. The taxpayer was represented by registered agent Travis Mauldin. The assessor of property was represented by staff appraiser Jesse Denton.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of the 208 unit Chapel Ridge Apartments located at 1590 Airport Road in Gallatin, Tennessee. Subject property receives tax credits pursuant to the federal LIHTC Program. Of the 208 units, 168 units receive restricted rents and 40 units receive market rents.

The taxpayer contended that subject property should be valued at \$11,209,940 after rounding. In support of this position, the taxpayer introduced an income approach (exhibit #1) which valued the income stream and tax credits at \$8,852,920 and \$2,357,013 respectively. The basis for Mr. Mauldin's various assumptions were included in exhibit #1.

At the hearing, the assessor contended that subject property should remain valued at \$12,474,400 based upon the actual cost to construct subject complex in 2005. Mr. Denton argued that the income approach should not be considered because the lack of an operating history makes projecting income and expenses unduly speculative.

Pursuant to the parties' request, the administrative judge held the record open to allow them to pursue settlement negotiations. The parties ultimately advised the administrative judge that they were unable to reach an agreement. At that point, the administrative judge was advised for the first time that the assessor was relying on an income approach that was not introduced at the hearing. The income approach consisted of two components: an "income and expense" worksheet prepared by Mr. Denton and a

discounted cash flow analysis prepared by Derrick Hammond, an appraiser with the Division of Property Assessments.

The administrative judge finds that the assessor did not formally seek to have the record reopened, but the taxpayer did not object to the assessor's belated attempt to place an income approach in the record. The administrative judge finds that the assessor's income approach should not technically be considered part of the record. However, the administrative judge finds that the taxpayer will not be prejudiced by its inclusion in the record because it must be rejected for the reasons enumerated below.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$11,850,000. As will be discussed below, the administrative judge finds that the income and cost approaches support value indications of \$11,209,940 and \$12,474,400 respectively. The administrative judge finds that the two approaches should receive approximately equal weight and be correlated at \$11,850,000.

The administrative judge finds that both the cost income approaches typically receive significant weight when appraising a Section 42 project for Tennessee and valorem tax purposes. See e.g., *Spring Hill, L.P. v. Tennessee State Board of Equalization*, No. M2001-02683, 2003 WL 23099679 (Tenn. App. December 31, 2003).

The administrative judge finds the taxpayer did not dispute that the assessor's cost approach accurately reflects actual construction costs. Accordingly, the administrative judge finds that the cost approach supports a value indication of \$12,474,400.

The administrative judge finds that Mr. Mauldin's income approach should receive greatest weight. The administrative judge finds that Mr. Mauldin documented each of his assumptions and his analysis was not challenged at the hearing.

Respectfully, the administrative judge finds that Mr. Denton's income approach must be rejected because the value of the tax credits are included twice. The administrative judge finds that Mr. Denton's income approach initially treats the first year's credit of \$275,452 as miscellaneous income. Given a 9.36% overall rate, this results in \$2,942,863 worth of additional value. Mr. Denton then adds another \$2,809,615 to his \$11,008,803 indication of value which he attributes to the "remaining tax credits." Thus, Mr. Denton's income approach effectively attributes a total of \$5,752,478 to the tax credits. The administrative judge would note that Mr. Hammond's DCF estimates the present value of the tax credits at only \$2,974,887.

As previously noted, Mr. Denton also sought to rely on Mr. Hammond's DCF following the hearing. The administrative judge finds that Mr. Hammond's DCF cannot provide a basis of valuation because he did not testify at the hearing and cannot be cross-examined. The administrative judge finds that the State Board of Equalization routinely refuses to consider even full-blown appraisal reports when the appraiser is not present to testify and the appraiser's report has been challenged. The basis for those decisions is typically the oft-cited ruling of the Assessment Appeals Commission in *TRW Koyo* (Monroe Co., Tax Years 1992-1994). In that case, the Commission refused to consider the taxpayer's appraisal report reasoning in pertinent part as follows:

The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .

* * *

. . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2.

Based upon the foregoing, the administrative judge finds that the cost and income approaches support value indications of \$12,474,400 and \$11,209,940 respectively. Given

the fact subject property was constructed in 2005, the administrative judge finds that the cost approach has greater probative value than it would for an older property. On the other hand, the administrative judge finds that even without a stabilized operating history, the typical investor would place significant weight on the income approach. The administrative judge finds that the two approaches should receive approximately equal weight and be correlated at \$11,850,000.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$816,200	\$11,033,800	\$11,850,000	\$4,740,000

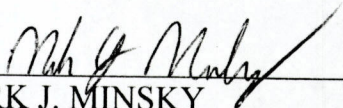
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 19th day of March, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Travis B. Mauldin
John C. Isbell, Assessor of Property